

**United States Department of Labor
Employees' Compensation Appeals Board**

L.M., Appellant)	
)	
and)	Docket No. 17-0532
)	Issued: April 17, 2017
DEPARTMENT OF VETERANS AFFAIRS,)	
VETERANS ADMINISTRATION MEDICAL)	
CENTER, Cleveland, OH, Employer)	

Appearances: *Case Submitted on the Record*
*Alan J. Shapiro, Esq., for the appellant*¹
Office of Solicitor, for the Director

DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge

JURISDICTION

On January 10, 2017 appellant, through counsel, filed a timely appeal from a November 16, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish injuries to her neck and left upper extremity causally related to factors of her federal employment.

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On January 23, 2015 appellant, then a 63-year-old secretary, filed an occupational disease claim (Form CA-2) alleging that she sustained injuries to her neck and left upper extremity due to constant, repetitious use of the telephone and computer in the performance of duty.³ She indicated that as a secretary she was constantly on the telephone providing service to various individuals and that the number of incoming calls was always high. Appellant further explained that she noticed increased left-side neck, shoulder, and upper extremity pain when she held the telephone between her left ear and shoulder, while simultaneously working on the computer. She identified April 8, 2013 as the date she first became aware of her claimed conditions. It was also the date appellant first realized her conditions were employment related. On the claim form, appellant's immediate supervisor advised that the employing establishment controverted the claim because there was no medical evidence to support the existence of a work-related condition.⁴ Appellant did not stop work.⁵

In a letter dated February 18, 2015, OWCP requested that appellant submit additional factual and medical evidence in support of her claim, including a physician's opinion supported by a medical explanation as to how her work activities caused or aggravated her claimed medical conditions.

Appellant submitted the findings of November 4, 2011 x-ray testing of her left shoulder, which contained an impression of degenerative changes of the left acromioclavicular joint.

In a report dated November 4, 2011, Dr. Elizabeth Mease, an attending Board-certified internist, noted that appellant reported having neck pain for the prior five or six months and that she had a habit of holding the telephone receiver at work between her left shoulder and head. She diagnosed left shoulder pain, possible impingement syndrome, possible bursitis, neck pain, and probable degenerative joint disease. On May 25, 2012 Dr. Mease diagnosed left shoulder pain, impingement syndrome, degeneration of the left acromioclavicular joint, and cervical pain (without excluding degenerative cervical spine disease). On December 4, 2014 she diagnosed cervalgia and pain of the left shoulder and intermittent left arm dysesthesias.

In a decision dated March 20, 2015, OWCP denied appellant's claim for a work-related occupational disease. It accepted her employment factors as alleged, but denied her claim because she failed to submit adequate medical evidence to establish a diagnosis in connection with the accepted employment exposure.

³ Appellant advised that x-rays showed that she had a pinched nerve in her neck which caused "electrical current to go to my elbow."

⁴ The record contains a March 13, 2015 letter in which appellant's immediate supervisor further discussed the employing establishment's challenge of appellant's claim.

⁵ The record reveals that, under a separate claim filed on November 10, 2011 (OWCP File No. xxxxxx839), appellant alleged that she sustained a left shoulder condition alleged to have occurred on July 21, 2010 due to operating a telephone device at work. Under another claim (OWCP File No. xxxxxx531), appellant filed an occupational disease claim on June 15, 2012 alleging that she sustained neck and left shoulder injuries due to using a telephone receiver at work. Appellant indicated that she first became aware of this claimed occupational disease on October 7, 2010. OWCP denied both claims, and they are not the subject of the present appeal before the Board.

Appellant submitted the findings of x-ray testing of her cervical spine obtained on January 19, 2015 and a magnetic resonance imaging (MRI) scan of her cervical spine obtained on February 27, 2015. The studies showed degenerative changes between the C2-3 and C6-7 levels.

In a report dated May 6, 2015, Dr. Nicholas Ahn, an attending Board-certified orthopedic surgeon, diagnosed left cervical radiculopathy with cervical stenosis with cord compression and discussed the findings of diagnostic testing and physical examination which he felt supported these diagnoses. He also diagnosed several lumbar spine conditions.

In a report dated May 19, 2015, Dr. John H. Paul, an attending Board-certified orthopedic surgeon, noted that appellant reported acute neck pain radiating into her left upper extremity with numbness, tingling sensation, and weakness of the left upper extremity. He diagnosed “complicated medical care injury” and indicated that he would conduct a review of the medical evidence of record.

In a report dated December 2, 2015, Dr. Al-Amin Khalil, an attending Board-certified anesthesiologist, diagnosed lower back pain and lumbar stenosis with neurogenic claudication.

In a letter dated March 8, 2016 received by OWCP on that date, appellant, through counsel, requested reconsideration of the March 20, 2015 decision.

Appellant submitted additional medical evidence, which was received by OWCP on March 15, 2016.

In a report dated September 21, 2010, Dr. Ahn described the lumbar spine surgery he performed on that date. In a report dated December 13, 2013, he indicated that appellant continued to complain of low back pain. In reports dated January 19 and October 1, 2015, Dr. Ahn diagnosed various conditions including cervical pain and cervical stenosis with cord compression.

By decision dated November 16, 2016, OWCP found that the newly submitted medical evidence from Dr. Ahn established a diagnosis of cervical radiculopathy and stenosis. However, the medical evidence of record was insufficient to establish causal relationship between appellant’s accepted employment factors and the diagnosed cervical conditions.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA, that the injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁶ To establish fact of injury, an employee must submit sufficient evidence to establish that he or she experienced a specific event, incident, or exposure

⁶ 5 U.S.C. § 8101(1); *B.B.*, 59 ECAB 234 (2007); *Elaine Pendleton*, 40 ECAB 1143 (1989).

occurring at the time, place, and in the manner alleged.⁷ An employee must also establish that such event, incident, or exposure caused an injury.⁸ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁹

OWCP regulations define the term “[o]ccupational disease or illness” as a condition produced by the work environment over a period longer than a single workday or shift.¹⁰ To establish that an injury was sustained in the performance of duty in an occupational disease claim, an employee must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the employee.¹¹

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence.¹² The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established employment factors.¹³

ANALYSIS

Appellant filed an occupational disease claim alleging injuries to her neck and left upper extremity as a result of performing her secretarial duties. Specifically, she attributed her neck and left shoulder/arm conditions to using the telephone at work, including cradling the unit between her head and left shoulder, while she simultaneously worked on the computer. OWCP accepted appellant’s employment factors as alleged, but denied her claim because she failed to submit sufficient medical evidence to establish a causal relationship between her diagnosed cervical condition(s) and the accepted occupational exposure.

The Board finds that appellant did not submit sufficient medical evidence to establish a work-related occupational disease to her neck, left shoulder, and/or left upper extremity.

Appellant submitted reports from several attending physicians in support of her claim. In reports dated November 4, 2011, May 25, 2012, and December 4, 2014, Dr. Mease diagnosed

⁷ *J.C.*, Docket No. 16-0057 (issued February 10, 2016); *E.A.*, 58 ECAB 677 (2007).

⁸ *Id.*

⁹ *R.H.*, 59 ECAB 382 (2008); *Ellen L. Noble*, 55 ECAB 530 (2004).

¹⁰ 20 C.F.R. § 10.5(q); *see also* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.2b (June 2011).

¹¹ *D.H.*, Docket No. 15-1876 (issued January 29, 2016); *D.I.*, 59 ECAB 158 (2007); *Victor J. Woodhams*, 41 ECAB 345 (1989).

¹² *F.S.*, Docket No. 15-1052 (issued July 17, 2015); *Tomas Martinez*, 54 ECAB 623 (2003).

¹³ *P.K.*, Docket No. 08-2551 (issued June 2, 2009); *John W. Montoya*, 54 ECAB 306 (2003).

conditions such as left shoulder impingement syndrome, degeneration of the left acromioclavicular joint, possible bursitis, neck pain, and probable degenerative cervical joint disease. Dr. Mease noted that appellant reported having neck pain for the prior five or six months and that she had a habit of holding the telephone receiver at work between her left shoulder and head. However, Dr. Mease did not provide an opinion of whether the diagnosed conditions were related to such employment factors. The Board has held that medical evidence that does not offer a clear opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.¹⁴ Therefore, Dr. Mease's reports fail to establish appellant's claim for occupational diseases of the neck, left shoulder, and left upper extremity.

In reports dated January 19, May 6, and October 1, 2015, Dr. Ahn diagnosed conditions such as left cervical radiculopathy with cervical stenosis with cord compression and discussed the findings of diagnostic testing and physical examination which he felt supported these diagnoses. The reports of Dr. Ahn are insufficient to establish appellant's claim because they do not contain an opinion that the diagnosed conditions were related to the accepted employment factors.¹⁵

In a report dated May 19, 2015, Dr. Paul noted that appellant reported acute neck pain radiating into her left upper extremity with numbness, tingling sensation, and weakness of the left upper extremity. He diagnosed "complicated medical care injury," but did not provide any other diagnosis or offer an opinion that appellant suffered an occupational disease due to employment factors.¹⁶

Appellant submitted reports of other attending physicians, but these reports did not discuss the condition of her neck, left shoulder, or left upper extremity. For example, in a report dated December 2, 2015, Dr. Khalil diagnosed lower back pain and lumbar stenosis with neurogenic claudication. Such reports provide no indication that the diagnosed conditions were related to employment factors.¹⁷

For these reasons, appellant did not submit sufficient medical evidence to establish a work-related occupational disease of her neck, left shoulder, or left upper extremity and OWCP properly denied her claim.

CONCLUSION

The Board finds that appellant did not meet her burden of proof to establish injuries to her neck and left upper extremity causally related to factors of her federal employment.

¹⁴ See *Charles H. Tomaszewski*, 39 ECAB 461 (1988).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the November 16, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: April 17, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board